IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

Crl.MC.No. 3002 of 2007()

CC.822/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT, VARKALA

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PETITIONER/ACCUSED:

ABDUL REHMAN, S/O.SHAHUL HAMEED,
PALIYAKUDY,
LEPPADSA THERUVU,
THIRUNELVELI DISTRICT.

BY ADV. SRI.J.DEVADANAM
SRI.PRAMOD J.DEV

RESPONDENTS/COMPLAINANT AND STATE:

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1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

2. FASSALUDDEEN, S/O.HABEED,
THUNDUVILA HOUSE
PARAYIL DESOM, EDAVAVILLAGE,
THIRUVANANTHAPURAM DISTRICT.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3002 of 2007

Dated this the 28th day of September 2007

O R D E R

The petitioner is the first accused in a prosecution for offences punishable inter alia under Sections 457 and 380 I.P.C. Altogether there are two accused persons. Articles kept in a shop room by the shopkeeper were allegedly thieved. Admittedly, recovery is also alleged to have been effected of the stolen articles. Petitioner was not available for trial. The co-accused stood trial. In such trial against the co-accused/second respondent, the prosecution examined only one witness, that is the de facto complainant. That witness did not tender any incriminating evidence against the said second accused. Consequently, the second accused was found not guilty and acquitted of all the charges levelled against him. The petitioner has now come before this court with the prayer that the proceedings against him may be quashed.

2. What are the reasons? Two reasons are urged. First of all it is said that the complainant has no consistent case. In one document the complainant said that he has lost about

Rs.600/-. On yet another occasion, he said that he has lost articles worth about Rs.1,000/- and on a third occasion he stated that article worth about Rs.3,000/- was lost. This alleged incongruity in the statement of PW1, according to me, cannot, at all justify quashing of proceedings against the petitioner in the facts and circumstances of this case.

3. The second contention raised is that in the trial against the co-accused, the principal witness/de facto complainant had turned hostile to the prosecution and did not tender any incriminating evidence against the second accused.

4. It is now trite after the decision of the Full Bench in Moosa vs. Sub Inspector of Police [2006(1) KLT 552 (FB)] that an absconding co-accused cannot claim any benefit or advantage on the basis of a judgment of acquittal rendered in favour of a co-accused on the basis of evidence adduced in such case. I am of the opinion in these circumstances that the acquittal of the co-accused on the basis of the evidence which was available before court when it passed Annexure 4 judgment of acquittal cannot, at any rate, entitle the petitioner who was absconding in the course of that trial to any benefit or advantage. It is unnecessary to go

to the factual dispute in any further detail. I take note of the fact that there is an allegation that the stolen articles were recovered. No evidence whatsoever appears to have been adduced in the trial against the co-accused of such recovery.

5. I am of the opinion that it is for the petitioner to appear before the learned Magistrate and take part in the trial and claim acquittal on the basis of the materials to be made available/brought out in such trial. The prayer to quash the proceedings cannot succeed.

6. In the result, this Criminal Miscellaneous Case is dismissed.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007